

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
James Chelmowski)	
Complainant,)	Proceeding No. 14-260
)	File No. EB-14-MD-016
v.)	
)	
AT&T Mobility LLC,)	
Defendant)	

ORDER ON RECONSIDERATION

Adopted: October 15, 2015

Released: October 16, 2015

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. On July 10, 2015, the Enforcement Bureau dismissed this case because the complaint was not filed within two years of the alleged injury, as required by the Communications Act. In this order, we deny a motion for reconsideration filed by complainant James Chelmowski because the motion does not identify any material error, omission, or reason warranting reconsideration, and merely repeats arguments that were fully considered and rejected in the dismissal order.

II. BACKGROUND

2. On August 10, 2015, Chelmowski filed a Motion to Reconsider¹ the Enforcement Bureau's Order² that dismissed his formal Complaint against AT&T Mobility LLC (AT&T).³ The Complaint, filed on December 11, 2014, alleged that AT&T violated Commission rules 52.35 and 52.36⁴

¹ Motion to Reconsider, File No. EB-14-MD-016, FCC No. 14-260 (filed Aug. 10, 2015) (Motion). AT&T filed an opposition to the Motion and Chelmowski filed a reply. *See* Opposition to Motion to Reconsider, File No. EB-14-MD-016, FCC No. 14-260 (filed Aug. 19, 2015) (Opposition); Complainant's Reply to Defendant's Opposition to Motion/Petition to Reconsideration, File No. EB-14-MD-016, FCC No. 14-260 (filed Aug. 27, 2015) (Motion to Reconsider Reply). Although the Motion does not cite a specific section of the Commission's rules, because the Motion asks the Bureau to "reconsider" the Order, we treat the Motion as a petition for reconsideration under Commission rule 1.106, 47 C.F.R. § 1.106 and section 405 of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 405. *See, e.g.*, Motion at cover page, 15, para. 44; Motion to Reconsider Reply at cover page, 24, para. 71.

² *James Chelmowski v. AT&T Mobility, LLC*, Memorandum Opinion and Order, File No. EB-14-MD-016, FCC No. 14-260 (Enf. Bur. rel. July 10, 2015) (Order).

³ Formal Complaint, File No. EB-14-MD-016, FCC No. 14-260 (filed Dec. 11, 2014) (Complaint). The Complaint was filed pursuant to section 208 of the Act, 47 U.S.C. § 208. AT&T filed an answer to the Complaint and Chelmowski filed a reply. *See* Answer to Complaint, File No. EB-14-MD-016, FCC No. 14-260 (filed Jan. 16, 2015) (Answer); FCC Formal Complaint Reply, File No. EB-14-MD-016, FCC No. 14-260 (filed Jan. 26, 2015) (Reply).

⁴ 47 C.F.R. §§ 52.35, 52.36.

by failing to port Chelmowski's telephone number from AT&T to his new provider in 2011.⁵ Chelmowski previously filed three informal complaints against AT&T concerning the same failed number port on March 23, 2011,⁶ August 31, 2011,⁷ and July 31, 2014.⁸ AT&T responded to the three informal complaints on April 13, 2011, September 22, 2011, and August 13, 2014, respectively.⁹ Although Chelmowski claims he never received AT&T's responses to the first and second informal complaints directly from AT&T,¹⁰ the record shows that the Commission provided Chelmowski with a copy of AT&T's responses to the first informal complaint and the second informal complaint on May 24, 2013¹¹ and October 22, 2013,¹² respectively.

3. The Bureau dismissed the Complaint as time-barred under the two-year statute of limitations in section 415(b) of the Act.¹³ The Bureau held that the Complaint was untimely because Chelmowski's cause of action accrued at the time of his alleged injury from the failed number port, which occurred more than two years before he filed the Complaint.¹⁴ The Bureau rejected Chelmowski's argument that the two year limitations period should be tolled because AT&T fraudulently concealed "material facts [relating] to the basis of his claim."¹⁵ The Bureau found that Mr. Chelmowski had the basic facts needed to assert his claim when he filed two informal complaints about the failed ports in 2011—more than two years before he filed the Complaint.¹⁶

4. Petitions for reconsideration are granted only in limited circumstances. Reconsideration is not appropriate where the petitioner fails to demonstrate a material error or omission in the original order, or does not raise additional facts not known or not existing until after the petitioner's last opportunity to present such matters.¹⁷ A petition for reconsideration that only reiterates facts and arguments previously considered and rejected will be denied.¹⁸

⁵ Order at para. 4 (citing Complaint at 17-18, para. 52-66 and Answer at 5, para. 8).

⁶ *See id.* at para. 5 (citing Informal Complaint 11-C00292341-1 (filed Mar. 23, 2011)).

⁷ *See id.* at para. 5 (citing Informal Complaint 11-C00325771-1 (filed Aug. 31, 2011)).

⁸ *See id.* at para. 7 (citing Informal Complaint 14-C00602676 (dated July 31, 2014)).

⁹ *See id.* at para. 7 (citing Complaint, Ex-0030 (Response to Notice of Informal Complaint 11-C00292341-1 (dated Apr. 13, 2011), Complaint, Ex-0029 (Response to Notice of Informal Complaint 11-C00325771-1 (dated Sept. 22, 2011)), and Complaint, Ex-0029 (Response to Notice of Informal Complaint 14-C00602676-1 (dated Aug. 13, 2014))).

¹⁰ *See, e.g.*, Complaint at 18, para. 63.

¹¹ *See* Order at para. 5 (citing Complaint, Ex-0030 (Response to Notice of Informal Complaint 11-C00292341-1 (dated Apr. 13, 2011) (showing a facsimile date-stamp from the Commission of May 24, 2013)).

¹² *See id.* at para. 8.

¹³ 47 U.S.C. § 415(b).

¹⁴ Order at para. 8.

¹⁵ Complaint at 10-11, para. 35.

¹⁶ *See* Order at paras. 8-11.

¹⁷ 47 C.F.R. § 1.106(p)(1) (petitions for reconsideration may be dismissed or denied where they "[f]ail to identify any material error, omission, or reason warranting reconsideration"). *See, e.g.*, *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, para. 2 (Enf. Bur. 2000); *Ely Radio, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 7608, 7610, para. 6 (Enf. Bur. 2012).

¹⁸ 47 C.F.R. § 1.106(a)(3) (petitions for reconsideration may be dismissed or denied where they "[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding"). *See, e.g.*, *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964) (reconsideration "will not be granted (continued....)

5. Chelmowski's Motion fails to present any information or argument warranting reconsideration of the Order. The Motion does not challenge the Bureau's finding that Chelmowski filed informal complaints in March and August 2011 concerning the same injury alleged in the Complaint. Instead, the Motion focuses on Chelmowski's argument that he should be entitled to obtain additional information from AT&T to substantiate the unlawfulness of AT&T's alleged porting violation.¹⁹ Such evidence, even if available, would provide no grounds for reversing the Bureau's Order because the record plainly shows that Chelmowski knew of his alleged injury when he filed the first informal complaint in 2011. The Complaint, filed in December, 2014, is thus barred by the two year limitations period in section 415(b) of the Act, and additional discovery concerning the alleged unlawfulness of AT&T's porting conduct cannot change that conclusion.²⁰

6. The Motion also repeats Chelmowski's argument, fully considered in the Order, that the statute of limitations should be tolled based on AT&T's alleged fraudulent concealment of his injury. The Motion provides no basis to reconsider the Bureau's conclusion that such tolling is unavailable here because Chelmowski had the basic facts needed to assert a claim, and he actually did so, in two informal complaints in 2011.²¹ Accordingly, because Chelmowski fails to provide any new information, or to raise any new arguments not previously considered and rejected by the Bureau, we deny the Motion pursuant to section 405 of the Act and section 1.106 of the Commission's rules.

(Continued from previous page) _____

merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken"), *aff'd Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *Ely Radio*, 27 FCC Rcd at 7610, para. 6; *EZ Sacramento*, 15 FCC Rcd at 18257, para. 2.

¹⁹ For example, Chelmowski suggests that staff's decision to waive the requirement in rules 1.724(c) and 1.726(c) that the answer and reply include proposed findings of fact and conclusions of law somehow deprived him of an opportunity to learn material facts regarding AT&T's conduct. 47 C.F.R. §§ 1.724(c) and 1.726(c). *See, e.g.*, Motion at 4, paras. 9-10. *See* Letter Order, File No. EB-14-MD-016, FCC No. 14-260, at 2 and n.5 (dated Dec. 16, 2014) (Letter Order). Staff explained that the waiver was warranted because "[e]xperience has shown that proposed findings of fact and conclusions of law are of limited value at this stage of the proceedings" and directed that "the answer and reply still must include comprehensive factual support and a thorough legal analysis, as required by Commission rules" Letter Order at 2, n.5. Chelmowski's argument overlooks this directive and the rule provisions requiring parties to include *all* material facts, supporting evidence and legal authorities in their pleadings. *See, e.g.*, 47 C.F.R. §§ 1.720(a)-(i); 1.724(b)-(g); 1.726(a), (d)-(e). Thus, the rules do not contemplate that a party's proposed findings of fact and conclusions of law will supply any facts or law not already stated in the pleadings.

²⁰ As a further basis for reconsideration, Chelmowski cites an arbitration proceeding between the parties, which Chelmowski admits is "not part of the scope" of the Complaint proceeding. *Id.* at 11, para. 29; *see also* Motion to Reconsider Reply at 14, para. 37 ("AAA Arbitrator apparently had no jurisdiction on Telecommunications Act and FCC Regulations."). Chelmowski, however, provides no reason why reconsideration is warranted based on the potential outcome of an arbitration proceeding which admittedly addresses claims not arising under the Act. Motion to Reconsider Reply at 14, para. 37.

²¹ Order at para. 10. We thus find no merit in Chelmowski's argument that the Bureau should reconsider its denial of his discovery requests to "end th[e] fraudulent concealment scheme which AT&T is continuing since 2011." Motion at 14-15, para. 42.

III. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.106 of the of the Commission's rules, 47 C.F.R. § 1.106, the Motion to Reconsider filed by James Chelmowski on August 10, 2015 is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief, Enforcement Bureau